

Office of the Assistant Secretary

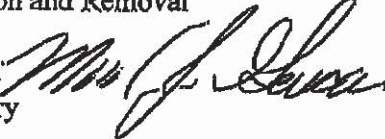
U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration and Customs Enforcement

FEB 9 2004

MEMORANDUM FOR: Anthony Tangeman
Deputy Executive Associate Commissioner
Office of Detention and Removal

FROM: Michael J. Garcia 
Assistant Secretary

SUBJECT: Detention Policy Where an Immigration Judge has Granted
Asylum and ICE has Appealed

This memorandum reiterates the U.S. Immigration and Customs Enforcement (ICE) policy where the immigration court has granted asylum (or other protection relief, such as withholding of removal or protection under the Convention Against Torture) and ICE has entered an appeal of the decision which is pending before the Board of Immigration Appeals.

In general, it is ICE policy to favor release of aliens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain.

For cases where a bond has been required but not posted, the bond should be reviewed following an immigration judge's grant of asylum so that an alien can be released in accordance with this ICE policy. Arriving aliens should be considered for parole.

In all cases, the Field Office Director must approve a decision to keep an alien granted protection relief in custody pending appeal, in consultation with the Chief Counsel. This review cannot be delegated beyond the Field Office Director or anyone acting in that capacity.

If you have any questions regarding this memorandum, please contact your local Chief Counsel.

cc: Victor Cerda
Acting Principal Legal Advisor